THE HONOLULU REPUBLICAN.

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EDWIN S. GILL - - - EDITOR

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HONOLULU, H. T., NOV. 2, 1900.

WEATHER YESTERDAY.

Mean Temperature—76.7 degrees.
Minimum Temperature—74 degrees.
Maximum Temperature—80 degrees.
Barometer—30.06 at 9 p. m.
Rainfall—0.02 inches.
Mean Dew Point for the Day—65.1°
Mean Relative Humidity—68.

WINDS.

Northeast, 3.

FORECAST FOR TODAY.

Moderate winds, generally fair

REPUBLICAN TICKET.

For Delegate to Congress.
(Unexpired Term 56th Congress.)
SAMUEL PARKER.

For Delegate to Congress.
(Full Term 57th Congress.)
SAMUEL PARKER.

For Senators—Island of Oahu.
W. C. ACHI.
CLCH. BROWN.
GEORGE R. CARTER.
CLARENCE L. CRABBE.
FRANK PAHIA.
HENRY WATERHOUSE.

For Representatives—Fourth District.
WILLIAM AYLETT.
A. F. GILFILLAN.
WM. H. HOOGS.
J. W. KEIKI.
JONAH KUMALAE.
A. G. M. ROBERTSON.

For Representatives—Fifth District.
W. J. COELHO.
H. R. HITCHCOCK.
ENOCH JOHNSON.
J. L. KAULUKOU.
JOHN C. LANE.
L. L. McCANDLESS.

THE SUNDAY REPUBLICAN.

The demand upon the advertising space in the Sunday Republican has been very heavy this week, but some choice positions in next Sunday's paper yet remain. If you want to take advantage of presenting your business opportunities to the most people for the least money you should arrange today for advertising space in the Sunday Republican.

It will be a great paper in every respect. Last Sunday's Republican was generally acknowledged to be the best edition of a daily paper ever printed in Honolulu and we promise you that the one for the coming Sunday will be fully up to the standard. As an evidence of how live advertisers and readers of a good paper look upon The Republican we append the following letter:

To the Editor of The Republican—

Sir: You had a good paper Sunday—the best paper you have ever published. It was full of good, live news, and the different departments were especially interesting. A man will dig his nose in a paper like that. It is too bad that so few merchants here understand the real value of the Sunday paper as an advertising medium. I notice that only the larger advertisers take advantage of it. To show my appreciation I will state that for the short time you have carried my first ad the results have been surprising.

KING BROS.

MUST OBEY THE LAW.

Secretary Cooper is unfortunate in his citations in the endeavor to bolster up a weak cause, in that every one of them contains a proviso that "where no illegal votes are taken" or "illegal voters are allowed to participate." His proposal to continue the polls open after the legal hour for closing, opens the way for all manner of fraud and illegal voting and by the very citations he gives, an election held under such circumstances would be void.

In holding that the section of the law directing the hour at which the polls shall be opened and closed is merely directory he is clearly in error. Mr. Cooper, in taking this view, evidently overlooks the fact that section 80 of the election law, after saying that the polls shall remain open until 5 of the clock in the afternoon further says, "*after which the polls shall be closed* and the votes counted as hereinafter provided." This clause clearly makes the closing of the polls at 5 o'clock mandatory instead of directory. It is not analogous to the New York cases cited by him in which the law says that the polls shall be opened at sunrise and close at sunset, there being nothing in the New York statute declaring that at sunset the polls shall remain closed and the count proceed.

McCrary, on elections, says, section 161: "Those provisions of the law which fix the time or place of holding elections are to be construed as mandatory and not as merely directory."

In passing upon the same question the supreme court of the state of Michigan held: "It is of far more consequence to the people of this state and to the stability of our form of government that these provisions should be held mandatory than is the fact that occasionally the will of the people may be defeated by adhering to them. (Atty. Gen'l. v. McQuack 94 Mich., 429.)" In Atty. Gen'l. v. Stilson, 108 Mich., 419, the court especially cited the former decision given above and said: "The law has attempted to provide uniform and strict regulations for elections." Then, discussing the case at issue, it further says: "The provisions of the law would be held mandatory and we think they should be in this instance."

In Major v. Barker, 99 Ky., 305, the court held that the provisions of the law requiring a voter to declare his disability under oath before the clerk could mark his ballot for him were mandatory and that "to permit the clerk or other election officers to assume, either from the voter's statement or their alleged personal knowledge that the voter was unable to mark his own ballot, was to open the doors for wholesale fraud."

In Varney v. Justice, 86 Ky., 886, the constitution of Kentucky provided: "That all elections by the people shall be held betwen 6 o'clock in the morning and 7 o'clock in the evening," one was held elected who had received the most votes at 7 p. m., though the polling place was kept open until 10, and when closed the other party had the majority.

In Hutchinson v. Woodruff the New Jersey court held that "Even though the result may not have been affected, yet, if a radical change is made in the hours the election is void."

"The term election implies a choice by an electoral body, at the time and substantially in the manner and with the safeguards provided by law, of a qualified person to an office. The act of choice must be done, the election must be conducted, as prescribed by law and under the safeguards which the law affords. Without the existence of these, at least in substance, however unmistakable the fact of choice, there is no election in law. The act of election derives all its force and validity from its substantial conformity to the constitution and laws." (Foster v. Scarff, 15 Ohio St., 532.)

"It is those provisions of the statutes relating to the time and place of holding elections, the qualifications of voters, and such others as are expressly made essential prerequisites to the validity of an election that are held to be mandatory; all others are directory merely; * * * But it is equally well settled that neglect of directory provisions of a statute designed to prevent fraudulent voting is ground for rejecting the entire vote of a precinct." (Russell v. McDowell, 83 Cal., 77.)

"The polls should be opened and closed at the hour, if any, fixed by the statute." (Am. and Eng. Enc. of L., p. 634.) "An election must not only be held at the time and place prescribed by law, but it must also be conducted substantially in the manner and with the formalities prescribed." (Supra., p. 690.)

It seems to us perfectly clear that any change in the hours for holding the polls open as provided by the election law of Hawaii would vitiate the election and lead to endless litigation and confusion. A more vicious proposition than that of Secretary Cooper could not have been set forth for the consideration of the people. If he had been hunting for some action which would invalidate the election and cause it to go for naught he could not have struck upon a more perfect method to accomplish such an object. It would hardly seem possible that Mr. Cooper could have had such an idea in view, though his position on this question has led many people to believe that the whole plan was, and is, a scheme to invalidate the election in case it failed to result as certain parties wished it to. We cannot bring ourselves to take this sordid view of the matter. Mr. Cooper simply o'erleaped himself and proposed to issue instructions for which he had, and has, no more authority to issue than any newsboy on the street.

SUGGESTS A WAY.

To the Editor of The Republican—

Sir: It is one of the proud boasts of the English common law that there is "no wrong without a remedy." Legal difficulties may arise that, for the moment, seem unsurmountable, but when approached in the light of the foregoing maxim the way over the barrier is made plain. So with reference to the confessed weakness of the arrangements for the coming election which involves the use of only three voting compartments in precincts where there are more voters than can possibly be accommodated in the booths.

Several plans have been suggested for overcoming the difficulty. One is to keep the polls open after 5 o'clock (the legal time for closing), if there are any voters who have been deprived earlier of the use of a compartment. Another suggestion is to build more than three compartments in the large precinct polling places.

The trouble with these suggestions is that they each run counter to an express prohibition of statute. Section 78 of the election laws provides for "not more than three voting shelves or compartments." Section 80 declares that the polls shall be kept open continuously until 5 of the clock in the afternoon, "*after which the polls shall be closed.*"

To add to the number of compartments would be plainly against the statute, and it would be equally so to keep the polls open after the hour of 5 o'clock. Now, is there any method which would enable all of the voters to cast their ballots without any affirmative violation of the statute? It is believed that there is.

By way of preface it may be said that the so-called Australian ballot law of Hawaii is very brief when compared with the statutes of the states and territories of the country. It is silent in many respects especially with reference to any forfeiture of votes for failure to observe its requirements. The problem, then, is to so arrange as to permit of voting by all electors and yet not infract the statute to an extent that would endanger the vote as cast. For it must be conceded that unless there be at least some slight deviation from the statute, hundreds of people will be deprived of their right of suffrage.

From what has been said it is conceded that there should not be more than three voting compartments made, and that the polls should be closed at 5 o'clock.

Section 99 of the election laws reads as follows: "Upon receiving the ballot so folded as aforesaid, the voter receiving the same shall forthwith proceed into one of the compartments provided for the purpose and shall then and therein mark his ballot in the manner herein prescribed."

The provision that the voter "shall forthwith proceed into one of the compartments * * and shall then and therein mark his ballot" is merely directory and not mandatory. Let the distinction between these terms be understood. Sutherland, on statutory constitution, says: "The consequential distinction between directory and mandatory statutes is that the violation of the former is attended with no consequences, while a failure to comply with the requirements of the other is productive of serious results." Bishop on Stat. Crimes, section 254: "A statute is called mandatory when, if not all of its provisions are complied with according to their terms, the thing done is, as to it, void."

While the statute directs that the voter shall mark his ballot while in one of the compartments, it is silent as to the consequences if the ballot be not there marked. In some of the states the election officers are required to decline ballots that are not prepared strictly in accordance with the statutory directions. Not so in Hawaii. There is nothing to vitiate the ballot or the vote at the precinct if any number of voters should choose to mark their ballots while outside of the little compartments, though within the prescribed enclosure, so that to accommodate the crush of voters some of them could use a table or the wall or a book on which they could mark their ballots.

The provision for the secret compartment is a privilege intended for the voter and to protect him in preparing a secret ballot. The public has an interest in this secrecy only to the extent that the right may be exercised at the option of the individual voter. It is a right which the voter may insist upon and it is the duty of the election officers to see that he is so accommodated. But it is also a privilege which he may waive. The sanctity of the ballot and the fairness of the election are not involved in the failure to observe this method. There is nothing about it that could possibly void the vote at the precinct where the plan was put into operation.

Bearing in mind that there must be a stretch of terms somewhere to get in all of the votes, the method described involves the least possible danger—nay, it is believed to be absolutely safe as against legal attack.

In the Illinois supreme court it was held that if votes were cast at the polls after the hour of closing, sufficient to change the result, the irregularity is fatal. (Pratt v. People, 29 Ills., 54.)

The supreme court of Minnesota held that the votes of a precinct will be rejected if there is evidence that votes were cast after the hour of closing. (46 Minn., 274.)

Mere irregularities will not vitiate the votes at a precinct. Paine on Elections, p. 424, says "that a mere irregularity, in conducting an election, which does not deprive a legal voter of his vote, or admit a disqualified voter to vote, or cast uncertainty on the result, and has not been occasioned by the agency of a party seeking to derive a benefit from it, should be overlooked in a proceeding to try the right to an office depending on such election."

In Vol. 18, Century Edition, American Digest, there is a long list of cases cited to support the proposition that "an election is not invalidated by an irregularity which is not shown to have effected the result."

While the keeping open of the polls after the regular hour of closing could affect the result, any variance in the number or absence of voting compartments could not possibly affect the result. In this connection the supreme court of the state of Washington held: "The fact that the election officers failed to have booths erected which complied with the law, found in the eighth finding, was an irregularity which could not vitiate the election." (Moyer v. Van De Vanter, 50 Am. St. Rep., 900.)

SCRIPTIS LEGIBUS.

Why is Secretary Cooper, whose duties in relation to the election are merely clerical, presuming to direct how the election shall be conducted? If the governor, who is the executive officer of the territory and the only official who has the power to direct or instruct the inspectors as to their duties (or, rather, on Mr. Cooper's plan, as to the violation of their duties) is afraid of the legality of the proposition, why does he not call upon the attorney general of the territory for an opinion? Surely, Mr. E. P. Dole is quite as competent as Mr. Cooper to pass upon the election law of Hawaii, and certainly his opinion would be given much more credence and respect by the people. But, then, the attorney general is no doubt not willing to make himself so ridiculous before the public as Mr. Cooper is making himself just now.